

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MATTHEW HIGHTOWER,

Defendant.

CRIMINAL NO.:
1:23-cr-00186-SAG-1

Baltimore, Maryland
May 20, 2025

TRANSCRIPT OF PROCEEDINGS
MOTIONS HEARING and PRETRIAL CONFERENCE
BEFORE THE HONORABLE STEPHANIE A. GALLAGHER
Courtroom 7C

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(Computer-aided transcription of stenotype notes)

P R O C E E D I N G S

(10:04 a.m.)

THE COURT: Good morning, everyone. Please be seated.

COUNSEL: Good morning.

THE COURT: Ms. Hagan, would you like to call the case.

MS. HAGAN: Yes, good morning, Your Honor. Calling United States versus Matthew Hightower. This is 23-186. Kim Hagan and Paul Budlow on behalf of the Government.

THE COURT: All right, good morning. Good morning, Ms. Whalen.

MS. WHALEN: Good morning. Teresa Whalen; I'm here on behalf of Mr. Hightower.

MR. GOLDMAN: Good morning, Your Honor. Dan Goldman on behalf of Mr. Hightower who's present.

THE COURT: All right. Good morning to all of you, and good morning, Mr. Hightower.

THE DEFENDANT: Good morning.

THE COURT: Okay. So we are here today for a pretrial conference. We have a number of things to go over on my agenda, and then I'll see if the parties have anything else we need to talk about.

The first thing is I think my clerk circulated yesterday two documents. One is the jury voir dire answer sheet, and the

1 other is the preliminary jury instructions that I prepared.
2 Starting maybe with the preliminary jury instructions, does
3 anyone have any objection to that form?

4 MS. HAGAN: No objection from the Government, Your
5 Honor.

6 MR. GOLDMAN: No objection from the defense, Your
7 Honor.

8 THE COURT: All right, that was easy.

9 All right. Next turning to the jury voir dire answer
10 sheet. First let me go over my jury selection because I don't
11 think that any of you have selected a jury with me using this
12 method before. Typically what I do -- actually the one thing I
13 have not yet done. We have 75 jurors, I think, coming in for
14 this trial. I think we can fit 75 people in here. Do you
15 happen to know, Russell?

16 THE CLERK: Might be pushing it but we'll --

17 THE COURT: Probably going to be cutting it close.
18 What I typically do is I have the entire pool come into the
19 courtroom. We hand out clipboards to each juror with this
20 written questionnaire on it. They each have a pencil. They
21 sit at their seats in the courtroom. I read this aloud to them
22 as they go through, and they make checkmarks on the answer
23 sheet.

24 Then when they are finished reading the entirety, we
25 collect all of the clipboards and questionnaires. We then

1 excuse all the jurors to generally the courtroom next door, and
2 we bring them in one at a time. They sit in the jury box. We
3 have a law clerk standing at the podium flipping through the
4 answer sheet, so you're seeing the answer sheet on your
5 screens. They are flipping through, and I ask any follow-up
6 questions that would typically be asked with respect to the
7 questions on the answer sheet.

8 I do generally allow counsel very limited follow-up to
9 questions that I'm asking or if somebody has a question about
10 something on the demographic information or something like
11 that, we entertain limited follow-up from counsel as well.

12 Then once we finished questioning that particular juror,
13 they step back outside the courtroom. I entertain any strikes
14 for cause or hardship from the parties, and I rule immediately
15 on that strike request. That way we know if we add the person
16 to our list of qualified jurors or not.

17 Once we get to the number -- and we'll go over in a minute
18 what number we need. Once we hit the number of qualified
19 jurors we need, we stop going through the answer sheets and
20 just select from the pool that we have.

21 Does anyone have any questions about the way I've
22 explained that or the process I would follow?

23 MS. HAGAN: Not from the Government.

24 MS. WHALEN: No, Your Honor.

25 THE COURT: Okay. All right. I guess we then need

1 to think about how many jurors we need. It's the summertime so
2 we probably have less issue with sickness, but things do tend
3 to come up in terms of other issues. Have the parties talked
4 about how many alternates you think we would want in this
5 matter?

6 MS. HAGAN: At least three, Your Honor, would be the
7 Government's suggestion.

8 THE COURT: Ms. Whalen?

9 MS. WHALEN: We think that's fine, Your Honor.

10 THE COURT: Three?

11 MS. WHALEN: Yes.

12 THE COURT: Okay. Russell says we would need 35 then
13 to be qualified jurors. Does that sound right to everybody?
14 I'll give you a moment to work out the math. Does that give
15 them each two for alternates?

16 THE CLERK: Yes.

17 THE COURT: That looks like 35 to me. Does anyone
18 else have any issues with that?

19 MS. HAGAN: No, Your Honor.

20 MS. WHALEN: No.

21 THE COURT: So we would question them until we got to
22 35 qualified jurors. Again, I fear we'll lose some people in
23 terms of vacations and things of that nature, but hopefully we
24 can do okay.

25 All right. Any issues there? Mr. Budlow?

1 MR. BUDLOW: Quick question. When you're hearing
2 motions for strike for cause or particularly hardship, do you
3 typically hold off on some and move them to the bottom and wait
4 and see?

5 THE COURT: I usually make a pretty quick decision on
6 cause. Hardship I usually do put people -- sort of flag them
7 and wait until we get to the end and see how we're doing before
8 we make a decision on the hardship request.

9 MR. BUDLOW: Great, thank you.

10 THE COURT: Turning to the voir dire answer sheet
11 specifically, I use the parties' proposed voir dire that they
12 had submitted to prepare this. Obviously, there were some
13 things that I either moved around or eliminated.

14 Does anyone want to put anything in particular on the
15 record with respect to things you may have included that I have
16 taken out or objections that you have to anything that I have
17 here?

18 MS. HAGAN: Nothing from the Government, Your
19 Honor.

20 MS. WHALEN: Court's indulgence one moment.

21 THE COURT: Sure.

22 MR. GOLDMAN: Nothing from the defense, Your Honor.

23 THE COURT: Okay. All right. I think that is it in
24 terms of the preliminary instructions and voir dire unless
25 anyone can think of anything else?

1 MS. HAGAN: No, Your Honor.

2 MS. WHALEN: Your Honor, I think just number 2C with
3 the Wutoh murder and the healthcare fraud. I just want to
4 preserve that that's obviously the subject of a 404(b) motion,
5 so there may be an objection to that.

6 THE COURT: Okay, all right. We can talk about that
7 in a moment when we get to the motions in limine and revisit it
8 if necessary.

9 Okay. So I think we do have five motions in limine that
10 we need to discuss and I think, somewhat happily, some of these
11 motions in limine raise some issues that I think we're going to
12 need to work out in advance about how certain topics are going
13 to be addressed during the course of the trial. It's a bit of
14 a complicated situation because the facts that the Government
15 intends to prove in this case do touch on other crimes that are
16 not specifically charged in this case which I think is the
17 topic of the first motion in limine which is the Motion in
18 Limine to Admit Intrinsic Evidence or in the Alternative 404(b)
19 Evidence.

20 I have reviewed the parties' submission on this point but
21 I'm happy to let anyone argue or add anything that they would
22 like to say.

23 MS. HAGAN: Your Honor, unless the Court has any
24 additional questions on the Government's submissions, I would
25 just simply summarize that the nature of the evidence that the

1 Government intends to introduce outlined in our motion are
2 clearly intrinsic to the charges that Mr. Hightower faces and,
3 in the alternative, the evidence is admissible under 404(b)
4 because they are relevant and evidence of the planning, the
5 motive, the knowledge, preparation, and even in some instances
6 identity of the perpetrator.

7 For those reasons, Your Honor, the evidence is admissible
8 under 404(b). The proffered evidence is relevant, necessary,
9 reliable. And keeping in mind that the standard is not just
10 prejudicial evidence against Mr. Hightower but it has to be
11 unfairly prejudicial, and just using the case quoted by the
12 defense on the definition of unfair prejudice, the language
13 cited is that: Evidence is unfairly prejudicial when there is
14 a genuine risk that the emotions of the jury will be excited to
15 "irrational behavior." None of the proposed other acts that
16 the Government seeks to introduce against Mr. Hightower fall
17 within that category, Your Honor.

18 So for those reasons, we'd ask the Court to hold that the
19 proffered evidence is intrinsic to the crimes charged and then,
20 in the alternative, admissible under 404(b).

21 THE COURT: Let me ask just a couple of questions.
22 One that I don't have complete understanding of, what is the
23 connection between the healthcare fraud scheme and the
24 extortion Wutoh murder? It seems to me that they're sort of
25 two different things, and obviously the Wutoh murder is more

1 directly implicated by the facts that we're talking about
2 here.

3 MS. HAGAN: The healthcare fraud scheme investigation
4 and the David Wutoh murder investigation are linked by the
5 witness, the intended victim. The healthcare fraud scheme,
6 Your Honor, was the very beginning of this story. It all began
7 with that initial phone call by the intended victim to a
8 federal agency on the hotline to report it, and that sparked
9 the entire federal investigation. So that was the initial
10 focus of law enforcement was investigating the healthcare fraud
11 that was occurring at this company, RXRS, where Mr. Hightower
12 worked. During the course of that investigation, Mr. Wutoh was
13 murdered in September of 2013, early stages of this
14 investigation, and the intended victim provided information in
15 that investigation as well.

16 So there came a point in time where Mr. Hightower is now
17 being investigated for two different offenses, both providing
18 motive because he's learning that the same person is providing
19 information on both of these investigations.

20 THE COURT: Do you have evidence that he had received
21 information that the same person had provided healthcare-
22 related information as well?

23 MS. HAGAN: Yes, Your Honor. In fact, for example,
24 one of the categories of evidence that established
25 Mr. Hightower's knowledge are his own recorded calls. At the

1 jail he is speaking to a witness who is incarcerated at the
2 time, and Mr. Hightower is complaining about the intended
3 victim and how essentially she reported this alleged fraud
4 happening at the company. His discussions about the intended
5 victim are on multiple recorded calls over a period of time,
6 including much later in the investigation where it's clear that
7 he's complaining about the intended victim and how she was the
8 start of this entire thing.

9 Additionally, Your Honor, there will be testimony that
10 discovery was provided to Mr. Hightower's attorney after he was
11 indicted on the healthcare fraud investigation and that early
12 on in that discovery process, a memorandum written by a
13 detective summarizing his witness interviews included
14 information from the intended victim about what she told law
15 enforcement not only on the healthcare fraud investigation but
16 also on the David Wutoh murder. So --

17 THE COURT: Did that memo identify the intended
18 victim?

19 MS. HAGAN: Yes, yes. And there will be witness
20 testimony that Mr. Hightower knew, believed that it was the
21 intended victim that had started both the investigations.
22 So although factually the two investigations are not related to
23 one another, really the only fact that might be in common aside
24 from the fact the intended victim provided information on both
25 and establishes the motive is that David Wutoh was a friend and

1 associate of Harry Crawford who is one of the owners of RXRS,
2 and that is the connection between Mr. Hightower and David
3 Wutoh.

4 THE COURT: All right. Let me ask you this and this
5 may be a difficult question to answer in a sort of summary
6 fashion. Assume for a moment that I agree with you that a lot
7 of these things are essentially intrinsic to the charged crimes
8 and what the Government needs to prove, I think there is
9 probably a line that can be crossed to the point where we're
10 getting too into the weeds in terms of some of these other
11 offenses. On a basic level, the fact that the victim reported
12 the healthcare fraud and the fact that the victim reported the
13 Wutoh murder and that Mr. Hightower, in your view, knew those
14 things, that seems to be relevant to the case here. Getting
15 into the details of the healthcare fraud that was being
16 committed or the details of Mr. Wutoh's murder, some of those
17 things do not appear to me to be intrinsic to this offense.

18 Are you able to proffer in any sort of summary way how you
19 intend to touch on these things? I guess the same thing with
20 respect to the drug trafficking activities; right?

21 MS. HAGAN: Yes.

22 THE COURT: To the extent that the Government
23 believes it has evidence that the payment for the murder for
24 hire that it is charging involved turning over a drug source
25 and customer list and earnings and possibly some drugs, that is

1 all intrinsic to this crime. Getting into great detail about a
2 history of drug dealing is not as much.

3 MS. HAGAN: Yes.

4 THE COURT: Can you give me some sense of your intent
5 with respect to handling of those things.

6 MS. HAGAN: With respect to the healthcare fraud
7 investigation, essentially I can summarize that it can be
8 presented two ways. One, in the recorded jail calls,
9 Mr. Hightower himself details what the allegations are with
10 respect to the alleged fraud occurring at RXRS, and
11 specifically with his own allegations, Mr. Hightower and other
12 witnesses can say that the allegations were that he was signing
13 delivery tickets or falsifying delivery tickets of medical
14 supplies that were not delivered. That's essentially what he's
15 learning that the intended victim had reported, that generally
16 that was the nature of the fraud: The company is billing
17 Medicaid for medical supplies that weren't delivered, it's a
18 small company, and Mr. Hightower was the delivery person.

19 Additionally there will be witness testimony that that
20 was -- in addition to the calls from Mr. Hightower, witness
21 testimony that that was the sum and substance of the healthcare
22 fraud allegation.

23 THE COURT: I guess -- the allegation made by the
24 victim?

25 MS. HAGAN: And that's what the Government eventually

1 charged Mr. Hightower and others with, healthcare fraud arising
2 out of billing the government for supplies not delivered.

3 THE COURT: Okay. What about with respect to the
4 Wutoh murder, how much did you intend to get into that?

5 MS. HAGAN: The most efficient way to establish
6 Mr. Hightower's involvement in that would be to introduce the
7 fact of his conviction, Your Honor. Also relevant because the
8 strength of that case against him or the strength against the
9 healthcare fraud case against him is relevant to the strength
10 of his motive and the degree of his motive to want to get rid
11 of the primary witness against him. So certainly the most
12 efficient way would be to introduce a certified copy of his
13 conviction.

14 Additionally, Your Honor, Detective Sekou Hinton, who was
15 the primary investigator from the Baltimore County Police
16 Department, can summarize the basic facts of the initial
17 homicide, the crime scene, the fact that Mr. Wutoh was shot,
18 the date and time of his murder. Mr. Hightower himself
19 discusses the investigation over jail calls. In particular, he
20 discusses on more than one occasion over the calls and with
21 witnesses the fact that the government has a cell tower hit
22 placing him near Mr. Wutoh's residence.

23 Additionally, Your Honor, there would be witness testimony
24 about Mr. Hightower's statements about his involvement in the
25 Wutoh murder.

1 So although we don't need to delve into every detail and
2 retry Mr. Hightower for the extortion murder case, there are
3 ways that the Government can introduce so the jury can -- we
4 can establish for the jury a strength of that case against him
5 which then increases his motive to want to murder.

6 THE COURT: When you say the strength which increases
7 his motive, you're suggesting that the evidence was not
8 overly -- obviously he was eventually convicted, but you're
9 suggesting that the intended victim was a very critical piece
10 of the murder case? Is that what you're saying?

11 MS. HAGAN: Yes. And also what I mean, Your Honor,
12 is that, for example, I know in the defense's response, their
13 hope is that the Court would require the Government to present
14 the most limited story to the jury and simply have the
15 Government present evidence that Mr. Hightower was charged with
16 an offense, that there was a witness that had information
17 against him and that because he was charged with that offense,
18 he faced jail time. The most limited version of facts that
19 completely provides no context whatsoever.

20 The problem with that, Your Honor, is, for example, if I
21 were charged with a crime, whether it was grand theft auto or
22 robbery, if I thought that I were innocently -- incorrectly
23 being charged with a crime, I knew I was innocent but I learned
24 who the witnesses were against me, my motive to get rid of one
25 of those witnesses is not going to be as strong as if I

1 actually committed the crime, I knew the Government's case was
2 getting stronger, I became aware of who these witnesses are.
3 The motive to kill is much higher and greater knowing that I
4 actually committed the crime.

5 So that's the distinction the Government makes when I talk
6 about the strength of the crime, how it's related to the
7 strength of the motive; the degree of the motive is much
8 stronger knowing that Mr. Hightower did, in fact, commit the
9 crime against Mr. Wutoh.

10 THE COURT: Okay. Why don't you touch briefly on the
11 drug trafficking activities.

12 MS. HAGAN: Yes, Your Honor. The drug trafficking
13 activity is relevant for two reasons. One, it establishes the
14 element of procurement and payment. Mr. Hightower is charged
15 with murder for hire. There will be testimony that that was
16 the intended method of payment to the shooter of Ms. Ashburne.
17 Additionally --

18 THE COURT: Meaning turning over the source and
19 customer list and earnings?

20 MS. HAGAN: Yes, Your Honor. And that breakdown will
21 be further explained at trial as to how the numbers were to add
22 up to an amount that was to be paid to the shooter.

23 Additionally it establishes why Mr. Hightower was
24 comfortable approaching the shooter as a co-conspirator and
25 engaging in the planning of a murder plot and how he intended

1 to pay the shooter. So it is once again an inextricably
2 intertwined part of the story and provides context to the
3 testimony that the jury will hear from the co-conspirator and
4 shooter of Ms. Ashburne.

5 THE COURT: Okay. I think I understand your
6 position.

7 MS. HAGAN: Thank you.

8 THE COURT: Mr. Goldman, Ms. Whalen?

9 MR. GOLDMAN: Thank you, Your Honor. We'll largely
10 rest on our pleadings here but just to clarify a couple points
11 based on what the Government just said. It's our position that
12 these prior crimes are really just sort of piling on
13 Mr. Hightower and that much of this is not necessary for the
14 Government to prove its motive. What's sufficient is to say
15 that he was facing -- he was charged with crimes, he was facing
16 serious time, evidence was substantial against him, and that
17 there was a key witness -- and that the victim was a key
18 witness against him. That some sort of more sanitized version
19 of that prevents us from having to effectively go through
20 retrying the allegations in these prior cases because to the
21 extent that the Government is going to put on the evidence that
22 it just described, we need to be able to -- he has a due
23 process right to challenge that evidence. It's being used to
24 prove his guilt in this case.

25 We need to be able to challenge those underlying events,

1 and obviously we have different characterizations and different
2 types of views of some of that evidence and the strength of
3 that evidence.

4 I would note that in terms of the Wutoh case, the
5 Government has listed obviously the conviction. The conviction
6 is enormously prejudicial for the jury to know that he's been
7 previously convicted of a murder. And it's our position that
8 that's just going to -- that's sort of going to end the game
9 for them. Once they know he's been previously convicted of a
10 murder, they're going to be much more primed to believe that
11 he's the type of person who would commit a murder here.

12 THE COURT: Let me turn to Ms. Hagan for a moment.
13 Why does the Government believe that the conviction here is
14 relevant?

15 MS. HAGAN: It's relevant -- just on the topic that
16 we were just discussing, Your Honor. Again, the strength of
17 the evidence against Mr. Hightower.

18 THE COURT: But wouldn't the strength of the evidence
19 against Mr. Hightower be -- what would be relevant about it
20 would be his perception of the strength of the evidence at the
21 time when he made the decision to allegedly have the witness
22 murdered; right? Not so much the eventual disposition of the
23 murder case?

24 MS. HAGAN: Not the disposition but the fact that he
25 did it. So in the example I gave, the fact that I know that I

1 committed that robbery, and there's witnesses against me and
2 I'm finding out who they are, that makes me want to get rid of
3 the witnesses more than if I'm innocent and had nothing to do
4 with the case.

5 So the fact that he was, in fact, guilty, that he did
6 kill -- maybe that's the more articulate way for me to say it.
7 The fact that he did, in fact, kill David Wutoh is highly
8 probative to his desire and motive to kill the witness against
9 him.

10 THE COURT: All right, Mr. Goldman.

11 MR. GOLDMAN: Our position is that conviction itself
12 is not a fair stand-in for whether he actually did it or not.
13 Obviously a jury found -- based on the evidence that was
14 presented under the circumstances of that previous trial, they
15 did make that finding but that's not necessarily a fair
16 standard. There are a lot of reasons why someone might be
17 convicted without having committed the underlying offense
18 necessarily. And if we get into that, then I think we have
19 to -- we're going to have to be able to get much further into
20 the evidence of that case and litigate a lot of points along
21 the way.

22 As to sort of the importance of the victim, I'll note that
23 the Government stated they want to put in the conviction, they
24 want to put in a summary from Detective Hinton, jail calls from
25 our client and other witness testimony about statements that

1 he's made. That's a lot of evidence right there that they can
2 sort of work with and pick from there. But it also didn't
3 include anything from the victim herself in those categories of
4 evidence.

5 So I don't know that she -- I don't know that the
6 victim -- how important, how integral she was to the case
7 against him I think is up for debate. Obviously if we start
8 going down that road, then there's going to be -- it makes the
9 trial substantially more complicated and substantially longer
10 to have to go through all of those witnesses to prove up the
11 prior murder as well as the healthcare fraud conspiracy as
12 well. That case ultimately was dropped against him. He wasn't
13 ultimately convicted in that case.

14 THE COURT: Right. Let me ask you this. I see the
15 Government's point, particularly if there are jail calls with
16 your client's statement regarding the fact that this witness,
17 the prospective witness is the one who reported the healthcare
18 fraud offenses and the one who wasn't a witness that was going
19 to testify in this murder. That all seems to me to be clearly
20 integral to what the Government is trying to prove in this
21 case. Do you agree to that extent?

22 MR. GOLDMAN: I would generally agree. I would
23 disagree with the characterization of the actual content of
24 those calls. I think that what he's saying on those calls
25 doesn't necessarily support that he wants to get rid of her by

1 any means.

2 THE COURT: Okay. All right.

3 MR. GOLDMAN: As far as the drug trafficking goes,
4 that seems to be really a step too far. They can establish
5 that our client trusted the shooter because there are multiple
6 people who say they were very close friends. I think the
7 shooter himself will say he would call him his best friend, he
8 would call Mr. Hightower his best friend. So they have a long,
9 long relationship. The fact of the drug trafficking
10 relationship is really just another way to sort of impugn his
11 character and credibility.

12 In terms of the actual payment itself, the Government has
13 a sum that they've determined is what the payment was, and I
14 believe that's what the shooter will ultimately say that's what
15 the sum is. And it is comprised of drug proceeds and drugs
16 themselves, but I think just the amount of the payment itself
17 would be sufficient. I think we can come to some kind of
18 agreement to sanitize much of this and say this is what the
19 jury is going to be told about these prior cases and avoid
20 having to go through a whole lot of litigation, a whole lot of
21 witnesses who are going to prove it all up.

22 THE COURT: Let me say with respect to all of this, I
23 certainly encourage the parties to talk about if there are ways
24 to stipulate to some of these things to make things (a) more
25 palatable for the defense and (b) more streamlined in terms of

1 the presentation to the jury. Any rulings I make today
2 certainly doesn't foreclose anyone from trying to reach those
3 sorts of agreements, and I certainly encourage both sides to do
4 that.

5 MR. GOLDMAN: Well, we've had some communications
6 about these kinds of things. I think we probably don't agree
7 on the substance of that stipulation, but maybe there's
8 something we can come to to try to limit some of this stuff.

9 THE COURT: Okay, all right. Unless anyone has
10 anything else to say, let me say a few things.

11 First of all, I believe that most of this is intrinsic and
12 so I am going to allow most of what we've talked about today.
13 I do not see that the conviction itself is relevant. I think
14 that would be more prejudicial than it would be probative. I
15 think the critical part of all of this is Mr. Hightower's
16 understanding at the time in which the murder of the intended
17 witness was contemplated of the role of the prospective witness
18 and what she had reported and what she was going to do in
19 upcoming proceedings.

20 But I don't think this can be sanitized any further or
21 couched as just reported about certain crimes or anything like
22 that. I do take the Government's point that I think the nature
23 of these offenses, the nature of the crimes being alleged is
24 important in understanding the motivation that Mr. Hightower
25 might have to take action against the prospective witness.

1 So I don't -- I am not going to require further sanitation
2 of the healthcare fraud offenses or the Wutoh murder. Let me
3 say particularly with respect to the Wutoh murder though, I
4 expect the Government to be restrained in terms of retrying --
5 we're not retrying the murder, we're not trying for the first
6 time the healthcare charges. We're not going to be trying to
7 prove that he did these things.

8 The importance is he was charged with these things, what
9 is his understanding of what the case against him looked like,
10 what is his understanding of the role that the prospective
11 witness was going to play both in bringing us to the point that
12 they were at and in what he was going to do -- what the witness
13 was going to do at upcoming court proceedings. So I want the
14 focus to stay there and not to be on the evidence that he
15 committed the Wutoh murder and all of that, and I certainly
16 don't want to get to retrials on any of this. Again, I'm going
17 to exclude the conviction itself.

18 With respect to the drug trafficking though, I do believe
19 that it is fair game in terms of the nature of the payment that
20 was provided and also the relationship between the two.
21 Obviously while one might trust a friend to engage in this kind
22 of activity, one would be more comfortable approaching someone
23 who already had been involved in criminal activity together if
24 they were looking for someone to approach about committing
25 another crime. So I think that all of that is also intrinsic

1 to what the Government is trying to prove in this case.

2 Once again, that doesn't mean that I'm looking for
3 extensive information on how long have they been drug dealing,
4 how many drugs have been sold and things of that nature. I
5 want this presented in as streamlined a way as possible, but I
6 do think that the precise nature of the payment is fair game
7 and the fact that they had a previous relationship that
8 involved engaging in criminal activity is also fair game. So
9 while I will certainly entertain reasonable objections as we go
10 along in terms of they're going too far down the path, I want
11 to be cognizant of that, but I think that the nature of these
12 things is fair.

13 So I guess to the extent I'm ruling on this, I guess I'm
14 granting in part and denying in part the motion in limine to
15 admit extrinsic evidence, excluding really the conviction
16 itself.

17 Does anyone have any questions about that ruling?

18 MS. HAGAN: No, Your Honor. Thank you.

19 MR. GOLDMAN: No, Your Honor.

20 THE COURT: Okay, all right. The next is a sealed
21 motion and since we have a number of persons in the back of the
22 courtroom, maybe we'll save that one until the end.

23 MR. BUDLOW: Your Honor, I can tell you who I see in
24 the courtroom other than CSO are members of the prosecution
25 team and another assistant U.S. attorney.

1 THE COURT: Oh, okay.

2 MR. BUDLOW: From our perspective, we're willing to
3 go forward.

4 THE COURT: All right. Does anyone mind if we go
5 under seal at this point and --

6 MS. WHALEN: No, Your Honor.

7 THE COURT: -- discuss No. 95 -- 94 which is the
8 Motion in Limine to Admit 404(b) Evidence.

9 **(Portion held on the sealed record.)**

10 (Page 24, lines 10-25, through page 45, lines 1-3, are
11 filed under seal.)
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1 (Lines 1-3 intentionally left blank.)

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4 **(The following was held in open court:)**

5 THE COURT: So that is 94 which, again, is granted in
6 part and denied in part.

7 Now we move on to 95 which is a motion in limine to admit
8 certain exhibits and argument, a lot pertaining to the prior
9 trial. This goes to one question that I do have for the
10 Government which is it doesn't seem to me in this case that
11 it's really contested that Carter and Mosley committed the
12 shooting? Is that contested and to the extent it's not, how
13 much are we going to need to get into the evidence of their
14 commission of the shooting?

15 I'm talking about the two summary exhibits from the Carter
16 and Mosley trial. Summary chart with cell phone records.

17 MR. BUDLOW: I don't know what the defense's position
18 on that. Mr. Carter is going to testify. He's going to say
19 Mosley was with him, was part of this, was the driver.

20 This summary exhibit does include corroborating
21 information such as their various phone activity,
22 communications the night before, location activity, and the
23 Government does intend to continue to put that forward as part
24 of corroborating the testimony of Mr. Carter and proving the
25 case generally. I don't know if that answers the Court's

1 question.

2 THE COURT: It may. Does the defense want to speak
3 to any of this?

4 MR. GOLDMAN: I don't think that we can agree at this
5 point that we wouldn't contest the underlying facts of Carter
6 and Mosley's participation in this.

7 THE COURT: Okay.

8 MR. GOLDMAN: As to the summary charts, summary
9 exhibits, I think we don't object to the use of summary
10 exhibits provided the underlying data, we have it and that it
11 matches up to the underlying evidence that is otherwise
12 admissible.

13 THE COURT: All right. I think you had said that in
14 your motion. I wanted to make sure that I understood sort of
15 why we were heading down that path.

16 MR. BUDLOW: Sure. I understand that since it came
17 from the other trial, some of it overlaps.

18 THE COURT: Yes, I want to make sure we're not
19 completely retrying Carter and Mosley's responsibility,
20 although it sounds like if it's not conceded, we may need to
21 get into it to some --

22 MR. BUDLOW: To some extent, I think. With respect
23 to the motion and the defendant's response as to most of 95 and
24 103, we've met with counsel telephonically last week and really
25 worked through a lot of these.

1 THE COURT: Okay. Why don't you tell me then what we
2 still need to talk about.

3 MR. BUDLOW: Sure. I'll just tell the Court with
4 respect to the summaries, there's a video summary that's been
5 provided. There's a phone, location summary that involves
6 calls and texts, that's P2. That's been provided. I think the
7 defense is going to get back to us if there's things they think
8 need to be included or they have an issue with. I don't
9 believe we need to address them today.

10 There's a lot of cell phone records. We've discussed with
11 the defense the need to provide, let's just say, accurate and
12 compliant certifications for those records. I think that we're
13 in the process of doing that and consulting with them. I don't
14 think we need to address that today unless the Court thinks
15 otherwise.

16 THE COURT: Is this in 96, the business records?

17 MR. BUDLOW: These are all in 95.

18 THE COURT: Okay.

19 MR. BUDLOW: That leaves the Government's motion in
20 limine in 95 relating to precluding the defense from arguing
21 that the comparative weight of the evidence in this trial was
22 different from another trial or that the Government had a view
23 of the evidence at one point in time or that defendants were
24 charged or not charged, everything relating to that, which I'm
25 happy to discuss if the Court wants to hear from the Government

1 first or would prefer to hear from the defense first.

2 THE COURT: I'd probably hear from the defense first.
3 Did you say you've resolved the part about the penalties?

4 MR. BUDLOW: I didn't say that but I think we have.

5 THE COURT: Okay.

6 MR. BUDLOW: I'll just sort of front that for the
7 Court because it could seem different when we do it at trial.
8 Defense's view is that what they have expressed is they don't
9 plan on arguing anything about penalties relating to
10 Mr. Hightower in front of the jury, referencing it in their
11 questions. They do expect to have the ability to cross-examine
12 a cooperator such as Mr. Carter who is facing significant --
13 has already been sentenced to significant time. We agree with
14 that, and so I don't think we have any issue there.

15 THE COURT: Okay.

16 MR. GOLDMAN: We largely agree on that. We presume
17 that the jury will likely make the inference that the penalties
18 are the same, but we're not going to argue it as to
19 Mr. Hightower.

20 THE COURT: They'll be subject to the standard
21 instruction that they are not to consider punishment. Again, I
22 think in every case you instruct them, and you hope they follow
23 it and presume they follow it so we'll do that.

24 MR. GOLDMAN: Okay. As for the relative -- the issue
25 of the relative strength of the prior trial, we're certainly

1 not going to argue anything about the Government's belief or
2 their opinions or certainly any communications that we've had
3 with them about any beliefs that they had about the relative
4 strength of the case at that time. But I do think it is fair
5 for us to be able to argue -- certainly if Mr. Hightower was
6 not charged in the initial indictment, in the initial trial of
7 Carter and Mosley, he wasn't their -- was not evidence
8 sufficient to bring charges against him until these cooperators
9 came forward.

10 THE COURT: But what evidence do you have that there
11 was not sufficient evidence to bring charges? We know that
12 they did not bring charges, but how would that not be based on
13 the Government's belief or opinions which may or may not have
14 been there? It may be that there was some other reason that
15 the Government decided not to bring charges at that point in
16 time.

17 MR. GOLDMAN: I think at the very least, we need to
18 be able to argue that Mr. Hightower was not charged with these
19 until evidence of these two cooperators came forward. I think
20 the Government's belief about why they didn't charge it
21 earlier, I agree I'm not -- we won't get into their
22 prosecutorial choice at that point. But at the same time, I
23 think it's fair for the jury to draw an inference from the fact
24 that he wasn't charged previously, and charges were not brought
25 against him until Davon Carter and CW-1 provided additional

1 information and different information than what the Government
2 had previously.

3 Whether they had enough to charge before and didn't, I
4 think that's -- maybe that's out of bounds. But to the extent
5 that the charges weren't brought until these people came
6 forward, I think that's fair argument, and he has a right to
7 present a defense on those points, that these are the witnesses
8 and if a jury -- we're certainly going to be arguing that the
9 jury shouldn't believe these two witnesses and there are a lot
10 of reasons why we'll be arguing why they shouldn't believe
11 those witnesses. Without that evidence, then he couldn't be
12 convicted.

13 THE COURT: So as I understand it now, you're not
14 going to be arguing that the Government had a stronger case
15 against Carter and Mosley or that the Government made charging
16 decisions for a particular reason. You're just going to be
17 arguing that he was not charged until the two cooperators came
18 forward.

19 MR. GOLDMAN: I think that the strength of the
20 evidence against Carter, I think we will argue that the
21 evidence against Carter is substantially stronger but the
22 timing issue --

23 THE COURT: How is that relevant? The jury is being
24 asked to decide one thing which is whether the Government has
25 produced sufficient evidence to prove Mr. Hightower guilty.

1 What does how much evidence they might have had against someone
2 else have to do with that?

3 MR. GOLDMAN: Well, it goes to the -- I think it goes
4 to the issue of Mr. Carter's credibility in and of itself.
5 We're going to be -- the big part of this case is going to be
6 questioning Mr. Carter's credibility, and the fact that he went
7 to trial and was not -- was maintaining his innocence for all
8 that time. It wasn't until there was a benefit to him down the
9 road that he changed his mind and provided this information
10 once he already had a life sentence. I think it clearly goes
11 to his credibility as a witness in this case.

12 THE COURT: That part may go to his credibility but
13 what does the relative strength of the evidence have to do with
14 any of it? I understand that he has been convicted of
15 something, he received a life sentence and now he's coming in
16 to cooperate, and that certainly gives you to grounds to try to
17 impeach his testimony. But I don't understand why comparing
18 the strength of evidence against one person versus the strength
19 of another, I don't understand the relevance of that.

20 MR. GOLDMAN: I suppose that's fair. We won't argue
21 itself in...

22 MS. WHALEN: Court's indulgence.

23 THE COURT: Sure.

24 MR. GOLDMAN: I think it goes to the point of what --
25 it gives a jury an opportunity to look at what a reasonable

1 doubt looks like and to be able to argue that: This is the
2 evidence they had against Mr. Carter, this is what they
3 presented against Mr. Carter. And at this point in time, you
4 don't have that evidence against Mr. Hightower.

5 THE COURT: All right. I will say that I'm not
6 inclined to go with that argument. Let me let Mr. Budlow
7 respond to --

8 MR. BUDLOW: Thank you, Your Honor. I appreciate at
9 least they're saying it out loud, saying the grossly, patently
10 inappropriate part out loud which is that you can't consider
11 evidence against somebody else when considering the guilt or
12 innocence of this defendant. It's beyond question -- first of
13 all, defense cites no cases for the position that they can
14 introduce evidence or ask questions or make arguments that are
15 expressly prohibited. It's beyond question the jury should
16 only consider the evidence in this trial. The jury cannot base
17 their evidence on evidence from the trial of a co-defendant.
18 The jury can never draw any inference from who is or who is not
19 charged, not prior to trial, not even at trial and not later.

20 It's beyond question that the guilt of others is never a
21 proper consideration. And even in trials when there are
22 co-defendants, the jury is instructed to consider each
23 defendant separately and the evidence against each separately.
24 That is expressly what the defense asks you to do.

25 The Court asked: Are you just going to argue that they

1 weren't charged until the two cooperators came forward? That
2 should never be allowed. They shouldn't get to know who was
3 charged in a prior trial. They shouldn't get to know when
4 charges were filed against other individuals --

5 THE COURT: They will know about Mr. Carter, though,
6 because he's going to testify and so --

7 MR. BUDLOW: That's right. And the jury should be
8 told not to speculate about who else may or may not have been
9 on trial at that time. What, for example, if everyone was
10 charged in that case and there were hung juries against the
11 other two defendants? We would never let the jury know who was
12 also tried in that case if it was necessary here to say: At
13 the prior trial, didn't you testify to this or at the prior
14 trial, didn't something happen? We would keep out that there
15 were anybody else charged.

16 I think just looking right at the jury instructions makes
17 all of these points clear, both the ones that we submitted and
18 some others. For example, we submitted a pattern instruction
19 that's a combination of 2-18 and 3-4 which was Jury
20 Instruction 9. The defense discusses 3-4 in their argument,
21 but I think they misread it or read only the part that doesn't
22 apply here. 3-4 says, "You may not draw any inference,
23 favorable or unfavorable, towards the Government or the
24 defendants on trial from the fact that certain persons were not
25 named as defendants in the indictment."

1 It couldn't be more clear than that. "The circumstances
2 that these persons were not indicted must play no part in your
3 deliberations." In the comments says, "When there are claims
4 that persons other than the defendants on trial participated in
5 the crime charged, it's appropriate for the Court to instruct
6 the jury to disregard the fact that others were not also
7 indicted except insofar as the fact may bear on the credibility
8 of unindicted accomplices who testify. This is especially so
9 when the defense counsel attempts to claim discriminatory
10 prosecution as a defense to the jury." So it's clear that this
11 idea that you can say who was and wasn't in charge and when
12 isn't allowed.

13 Additionally in Instruction 3-5 -- this was not requested
14 because it applies to co-defendants, but I think it's
15 instructive. This is consider each defendant separately. The
16 Court would instruct the jury "Your verdict as to each
17 defendant must be determined separately with respect to him,
18 solely on the evidence or lack of evidence presented against
19 him without regard to the guilt or innocence of anyone else."

20 Additionally, Jury Instruction 3-7 also relating to
21 co-defendants so not provided here but instructive. "Bear in
22 mind that guilt is personal and individual. Your verdict must
23 be based solely upon the evidence about each defendant. The
24 case against each defendant stands or falls upon the proof or
25 lack of proof against the defendant alone, and your verdict as

1 to any defendant should not influence your decision as to any
2 other defendant."

3 Finally, the instruction that we provided that also
4 included -- I'm sorry, Instruction 2-18 which we merged with
5 3-4. 2-18, the very first line, says "As a general rule the
6 jury, in reaching its verdict, should consider only whether the
7 guilt of the defendant on trial has been proven. The guilt of
8 others is not a proper consideration."

9 So when the defense says that we think the fact that the
10 defendant here wasn't charged until the two cooperators came
11 forward and that -- my initial thought is why is that relevant?
12 The defense says: And the jury should be free to draw any
13 inferences from that.

14 The inferences that they are suggesting that they would
15 either want to leave hanging and not argue or argue is exactly
16 all of these inappropriate considerations that the instructions
17 that the Court gives in every case are designed to prevent,
18 which is that the jury should think about things relating to
19 charging and the weight of evidence and the guilt of others
20 that are outside of this courtroom, that aren't about the
21 evidence in this courtroom, and consider them in determining
22 whether or not the defendant in this trial has been proven
23 guilty beyond a reasonable doubt, a standard that isn't
24 defined. So they shouldn't be able to add evidence to help
25 define that standard any better.

1 The fact that a case can be sufficient for beyond a
2 reasonable doubt with one quantum of evidence doesn't mean that
3 it also can't be found to be guilty beyond a reasonable doubt
4 with a lesser quantum of evidence. That's precisely the reason
5 or one of the reasons why the Fourth Circuit doesn't allow
6 defendants to attempt to define reasonable doubt. In bringing
7 in these outside considerations, there's no inference proposed
8 other than an inappropriate inference to say that the evidence
9 is weaker here or the Government had a different position here
10 or that the Government is relying solely on the evidence of
11 cooperator and that the jury, therefore, if they don't believe
12 the cooperator, shouldn't be able to consider all of the other
13 evidence in reaching the beyond-a-reasonable-doubt decision.

14 They can argue that separately, they just can't use the
15 fact who was arrested when to try to tell the jury that there's
16 somebody else decided that that wasn't sufficient.

17 THE COURT: Okay, thank you. Anything further,
18 Mr. Goldman?

19 MR. GOLDMAN: I would just say briefly on the jury
20 instructions related to co-the defendants, I think those are
21 meant to deal with the particular prejudice of people being
22 tried together at the same table in the same courtroom. So I
23 think those particular instructions aren't relevant to this
24 particular motion. But I do think that -- I think the point is
25 taken that the comparing this case to Mr. Carter's case may be

1 outside of the bounds, but to the extent that we can argue
2 about the facts in each of those cases, certainly I think
3 that's within the scope of our defense.

4 THE COURT: Okay. All right. I generally agree with
5 the Government on most of what Mr. Budlow just said. I don't
6 think that the evidence at one trial can be used comparatively
7 either to draw a reasonable doubt standard or to argue the
8 sufficiency of the evidence in this case. In a bank robbery
9 case, you might have one person who's caught red-handed and
10 confessed to the crime and another person in which there's only
11 circumstantial evidence, but the evidence may be sufficient to
12 find guilt beyond a reasonable doubt in both kinds of cases.
13 And allowing the facts of one case to be brought in in another
14 case, it just doesn't make sense. It's not the way things
15 work.

16 The jury is supposed to make a decision based on the
17 evidence that is presented to it in court and whether the
18 Government has met the standard of proving guilt beyond a
19 reasonable doubt.

20 I also think there's a great deal of danger whether either
21 expressly or by inference getting into the reason for
22 Government's charging decisions and what evidence sort of
23 tipped the scale in favor of the Government making a charging
24 decision or not. I understand that he was not charged until
25 these two cooperators came forward, but it doesn't mean that

1 was the reason for the timing of the Government's decision and
2 I don't think that it's appropriate to allow the jury to
3 speculate about those things.

4 So I am going to grant the motion to exclude references to
5 the relative strength of the prior trial. While we're not
6 specifically talking about jury instructions right now, I'm
7 inclined to stay with the standard instructions in terms of the
8 fact that you consider the evidence presented against this
9 defendant at this trial. Clearly, we're not going to be
10 getting into all of the instructions that Mr. Budlow talked
11 about today that no one is requesting, but generally I don't
12 see a reason to draw distinctions between this case and other
13 cases in terms of the instructions that will be given to the
14 jury.

15 Is there anything I need to clarify about that ruling?

16 MR. BUDLOW: Your Honor, I would ask the Court to
17 also rule that the defendant is precluded from eliciting
18 testimony relating to that Mr. Hightower wasn't charged earlier
19 and that he was only charged after the two cooperators came
20 forward -- that's what the defense claims -- or anything
21 adjacent to that. I'm not sure how many different ways they
22 can attempt --

23 THE COURT: The timeline, I think, will likely come
24 out from various people's testimony; right? They're going to
25 know Mr. Carter went to trial. Presumably they'll know when

1 Mr. Carter went to trial, and presumably they'll know when
2 Mr. Hightower was charged from other testimony? Maybe, maybe
3 not. I don't know whether the date of Mr. Hightower's charge
4 will be part of the record.

5 MR. BUDLOW: I don't believe it was part of the
6 Government's plan for their offer of proof to put in the date
7 of the indictment or date of his arrest on these charges. So I
8 don't know that that's something they would otherwise learn.

9 THE COURT: They may be able to draw a reasonable
10 inference based on the number of years that have elapsed from
11 when Mr. Carter was tried, but you don't think there's going to
12 be specific evidence on that point?

13 MR. BUDLOW: Court's indulgence.

14 For now I don't believe that would be part of the
15 Government's proof, and the Government's view is that the jury
16 wouldn't need to know anything about who was charged in the
17 earlier case except that there was a trial. I mean, I don't
18 think we were planning on bringing up, for example, that
19 Mr. Mosley was tried with Mr. Carter and that he was convicted.
20 I think that would fly in the face of these jury instructions
21 as well, to make sure we caution witnesses not to discuss that
22 unless the defense wants it in for some reason. Then we could
23 discuss it.

24 The Government's view is that timeline, although they'll
25 see the gap in years, but juries hear old trials and retrials

1 and are often instructed, depending on the circumstances, not
2 to consider what happened previously.

3 THE COURT: Okay. Does the defense want to respond?

4 MR. GOLDMAN: The only potential concern that I see
5 with the timeline there is if the jury is left with the
6 misimpression that Mr. Hightower was tried previously and that
7 this is somehow a retrial of a prior case. I don't know
8 exactly how that -- how we would address that. I don't know
9 that we have the information to address that right now, but
10 that would be a concern that we would have about the timeline
11 and that they would be left with that belief. We could
12 probably come up with an instruction that would deal with that
13 if need be.

14 THE COURT: I was just going to say you have
15 submitted jury instructions for the conclusion of the case as
16 we do in every case. One thing I want the parties to think
17 about, confer about and then possibly propose to the Court is
18 appropriate limiting instructions to be given at different
19 points in time during the trial. This does seem like a case
20 in which certain limiting instructions will be appropriate
21 during the course of testimony, not just at the end of the
22 trial.

23 For example, when we're talking about some of these other
24 things, the Wutoh murder, et cetera, it seems to me that it
25 will be safest to give certain limiting instructions as the

1 trial goes on. This may be another circumstance, with respect
2 to the timeline and Mr. Carter, that parties can give some
3 thought to and potentially talk about whether some sort of
4 limiting instruction when that is going on. Or at the end in
5 the regular jury instructions. But it does seem to me that
6 appropriate limiting instructions are going to have to be used
7 throughout the case, and I encourage everyone to think about
8 ways to do that.

9 All right. So based on what I'm hearing, at least as
10 things stand right now, I don't think arguments as to the
11 timeline and when people are charged are going to be
12 appropriate. But, again, we'll see how things develop as the
13 case goes forward.

14 So that's 95. Then we have the business records in 96 and
15 what notice has been provided, I guess, in terms of these
16 records?

17 MR. BUDLOW: I see, the business records. I may have
18 conflated these arguments earlier. We've met and discussed
19 this with the defense. I do believe that it was primarily
20 relating to certifications and phone records. Let me just
21 double-check. I don't believe that any of those... those fell
22 into three categories. There were records from CDF, cell phone
23 records and potential time sheet records from the employer or
24 from a business. I think we're still working through getting
25 certifications. I feel like, based on our conversation, that

1 we were in agreement as to what the Government needed to
2 provide and that there wouldn't be objections based on
3 authenticity if we do that and that we don't need to address
4 any of those now. Certainly defense can tell me if I
5 misspoke.

6 MR. GOLDMAN: I think that's right. We just want to
7 make sure we have the proper certifications, that they match to
8 the actual records that were provided at the time the
9 certification was done and that we have that all lined up
10 because we have things sort of scattered across discovery at
11 this point. It's not always clear which certification matches
12 to which records. We're not asking custodians be brought if
13 certification is proper.

14 THE COURT: Okay. So is it best I defer on the
15 business record motion then or grant it? How should I deal
16 with that? I certainly don't want to be -- I don't see a basis
17 at this point to exclude the business records, but I'm not sure
18 I should be admitting them either until --

19 MR. BUDLOW: I'm happy for the Court to defer. We
20 can bring it to the Court's attention before trial if any
21 disputes.

22 MR. GOLDMAN: I agree.

23 THE COURT: I'll defer on 96 and the parties will
24 alert me if we either have a dispute or if we decide we don't
25 have a dispute.

1 Then the last motion is the motion in limine to admit
2 co-conspirator statements, the trial memo. It didn't request
3 pretrial determination of the admissibility. I'm not sure if
4 there's a ruling I'm being asked to make here. There was no
5 response to it.

6 MR. BUDLOW: Thank you, Your Honor. Completely
7 agree. We wanted to just sort of tee that up for the Court.
8 The defendant hasn't responded nor was there necessarily a
9 reason to. Unless the Court has questions, our view is that we
10 have at least one co-conspirator who's going to testify, and
11 the defense is certainly aware of most of the details of what's
12 going to come out. Just going to plow forward unless they have
13 an objection to bring to the Court's attention beforehand.

14 THE COURT: I will deny the motion because it was
15 filed as a motion because I'm not admitting anything at this
16 point in time, but I appreciate the notice about the
17 co-conspirator statements, and then we'll obviously deal with
18 things as they arise at trial.

19 All right. That is, I think, what I had for motions. Is
20 there anything that I'm missing with respect to motions?

21 MS. HAGAN: No, Your Honor.

22 MR. GOLDMAN: Not from the defense, Your Honor.

23 THE COURT: All right. The other thing I wanted to
24 mention is because I do the questionnaires for the jury, I will
25 need to get witness lists and lists of people who may be named

1 from the parties sooner rather than later. Again, just because
2 you put someone on the list, you are not indicating a strict
3 intent to call them as a witness. It's just a name that might
4 come up during the trial, but I need to have those lists so I
5 can finalize the questionnaires and get them to jury well in
6 advance. The sooner people can provide me with those lists,
7 the better. They should be as inclusive as necessary to make
8 sure we don't run into a situation where we're mentioning
9 someone later that the jury hasn't heard about.

10 All right. I think that is what I had on my agenda for
11 today. Do the parties have -- the other thing I wanted to talk
12 about is just some sort of basic issues about how we're going
13 to refer to prior things. Some of this might be -- go back to
14 the limiting instruction discussion that I was having earlier.
15 Obviously because jail calls are going to be played, it is
16 going to be evident to the jury that Mr. Hightower was at
17 certain points in time incarcerated. A limiting instruction,
18 it seems to me, as to that should be on the list of limiting
19 instructions that we're going to talk about.

20 I know that the defense raised an issue with respect to a
21 couple of terms that have been used certainly during the course
22 of briefing and some other things.

23 Mr. Hightower's charge in the Wutoh case, there's been
24 references to it as "extortion murder." I will say that
25 extortion murder is not a concept that I'm particularly

1 familiar with, and I think it might be a somewhat confusing
2 phrase. The charge in the case was extortion resulting in
3 death. Can we just agree that to the extent we're referring to
4 what the charge was in that case, we'll say extortion resulting
5 in death and not extortion murder?

6 MS. HAGAN: Yes, Your Honor. Yes.

7 THE COURT: Is that acceptable to the defense?

8 MR. GOLDMAN: I think we could refer to it just as
9 the "Wutah murder," I suppose, if that's where we're at right
10 now. It's the word extortion that I think is unnecessarily
11 prejudicial here.

12 THE COURT: Okay. So extortion was the issue, not
13 the murder?

14 MR. GOLDMAN: Well, obviously murder was --

15 MR. BUDLOW: -- extortion because that would be way
16 worse.

17 MR. GOLDMAN: I think that obviously you've already
18 ruled on the murder so I feel like that's coming in, so at this
19 point, we would prefer Wutah murder to extortion murder.

20 THE COURT: All right. I don't like extortion murder
21 either. I was going to go with extortion resulting in death,
22 but Wutah murder is also -- I don't think the extortion
23 component is particularly necessary with respect to what we're
24 getting into here. Is that accurate?

25 MS. HAGAN: Only in that he was ultimately charged

1 with extortion resulting in death and during some of the jail
2 calls when Mr. Hightower is discussing the loan that he made to
3 Mr. Wutoh and the fact that that loan was not being repaid, at
4 some point I think Mr. Hightower himself uses the word
5 extortion on one of the calls because he realizes that's what
6 the federal investigators are now looking into, extortion
7 resulting in death.

8 THE COURT: Okay. I'm not inclined to rule in any
9 way that's going to require redaction of calls, but I assume
10 that you're more talking about how it will be referred to in
11 discussion versus --

12 MR. GOLDMAN: Generally, yeah. In discussion and in
13 argument.

14 MS. HAGAN: Okay.

15 THE COURT: Right. So if we can just go with Wutoh
16 murder, I guess, instead of extortion murder, it seems to me it
17 will allow everyone fair notice of what we're talking about and
18 we'll get to the heart of the situation.

19 Then there was the term about the witness who was the
20 intended victim. Are we going to be referring to everyone by
21 name here? The intended victim and then Ms. Ashburne?

22 MS. HAGAN: Yes, yes.

23 THE COURT: So we're not going to need to come up
24 with phraseology such as whistle blower?

25 MS. HAGAN: No. I don't think the Government should

1 be precluded or have to instruct witnesses that they can't use
2 that term. If someone happens to reference the intended victim
3 as a whistle-blower or if the Government argues -- in closing
4 argument refers to that witness as a whistle-blower, that is
5 exactly what that witness --

6 THE COURT: It's a lot easier to instruct the
7 Government than it is to instruct the witnesses. I guess
8 whistle-blower introduces certain connotations that I'm not
9 sure entirely fit here. She's certainly the person who
10 reported the initial criminal activity, and I think that fact
11 sounds like it's going to be made clear.

12 MS. HAGAN: Yes. About what was occurring at her own
13 place of employment so that essentially is where that phrase
14 might be used is what she did was she reported it to the
15 federal authorities about what she thought her employer was
16 doing improperly.

17 THE COURT: Who else would use the term
18 whistle-blower besides you-all? Are there other witnesses who
19 potentially would use that word?

20 MS. HAGAN: Not that I know for sure, but I guess the
21 potential for a witness to -- during their testimony to refer
22 to that witness as the whistle-blower might happen.

23 THE COURT: I think because we have a confusing
24 enough situation in this case with an intended victim and an
25 actual victim, I would prefer that we stick with calling people

1 by name and staying away from the word whistle-blower. I think
2 using people's names will alleviate as much as possible any
3 confusion between the intended victim and actual victim.

4 MS. HAGAN: Yes.

5 THE COURT: As I said, use of whistle-blower tends to
6 create some other connotations too, so let's try to stick with
7 names and stay away from whistle-blower.

8 MS. HAGAN: Yes, Your Honor.

9 THE COURT: All right. Are there other such issues
10 the parties can think of or any other type of issue we should
11 be discussing today?

12 MR. BUDLOW: Your Honor, if this is the appropriate
13 time, you might have mentioned this at our last hearing or in a
14 filing, so I apologize. Could you give us a sense of the court
15 day? What time we'd be expected to arrive, when we'd stay,
16 breaks, things like that.

17 THE COURT: Sure. Typically I have counsel get
18 here -- depending on how many issues I think we have to
19 discuss -- between 9:00 and 9:30 in the morning. I usually
20 have the jury report at 9:25 to be ready to go at 9:30. My
21 goal always is to resolve as many issues outside of the jury's
22 presence as possible and to make maximal use of the jury's
23 time. I don't like having to have bench conferences. I don't
24 like having to have the jury go back to the jury room so we can
25 discuss something, so I always rely heavily on counsel to

1 highlight things in advance. If they know something is going
2 to come up in someone's testimony, let's talk about it before
3 the trial day starts or at the end of the trial day.

4 So usually get started at 9:30 with the jury. I typically
5 take a morning restroom break sometime around 11:00, 11:15, at
6 a natural breaking point in the testimony. Lunch typically,
7 again, is between 12:30 and 1:00, depending on where we are,
8 for an hour. Then I take a midafternoon break sometime in the
9 2:45 to 3:00, 3:15 range. Again, all of this is sort of based
10 on natural breaking points in the testimony.

11 Then I typically let the jury go for the day somewhere
12 between 4:30 and 5:00 and then, again, have the end-of-the-day
13 period to discuss things with counsel.

14 I do like counsel to give each other a heads-up the night
15 before who's on tap for the next day, at least no later than
16 the night before. If you'd like to do it earlier, you can
17 certainly do that as well.

18 MR. BUDLOW: Thank you.

19 THE COURT: That's the plan. I think the dates that
20 we'll be sitting are in the voir dire that I laid out. We have
21 a little bit of fits and starts here. Obviously we have to --
22 as I think my clerk let you know, we have to pick the jury on
23 the 17th and not on the 16th which was news to me. Apparently
24 it has to do with the fact that we are moving from one month
25 into another month, and we have different jury pools typically

1 for the month of June and the month of July. Because this was
2 running from June into July, we had to call in a special jury
3 pool because the June jury pool is told you're in for June.
4 But because this is rolling into July, that's why we needed a
5 special jury pool and that's why we have to pick on Tuesday.
6 That's the best of my understanding.

7 So we'll be getting started on Tuesday. Obviously I have
8 time on Monday so should the parties realize that issues have
9 arisen that we need to discuss, we can certainly convene at
10 some point on Monday to discuss them since we have that day
11 available to us. Anything else that anyone can think of at
12 this point that we need to talk about today?

13 MS. HAGAN: Not from the Government, Your Honor.

14 MS. WHALEN: Nor from the defense.

15 THE COURT: Okay. If you reach agreement on certain
16 things ahead of time that you want to let me know, that's fine.
17 I'll be looking to get your witness list as soon as I can, and
18 we will go from there.

19 All right. I thank you-all.

20 THE CLERK: All rise. This Honorable Court stands in
21 recess.

22 (Proceedings concluded at 11:47 a.m.)
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1 CERTIFICATE OF OFFICIAL REPORTER

2 I, Patricia G. Mitchell, Registered Merit Reporter,
3 Certified Realtime Reporter, in and for the United States
4 District Court for the District of Maryland, do hereby certify,
5 pursuant to 28 U.S.C. § 753, that the foregoing is a true and
6 correct transcript of the stenographically-reported proceedings
7 held in the above-entitled matter and the transcript page
8 format is in conformance with the regulations of the Judicial
9 Conference of the United States.

10 Dated this 11th day of June 2025.

11
12 

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14 Patricia G. Mitchell, RMR, CRR
15 Federal Official Reporter
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